93-555

Supreme Court, U.S.
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No. 93-382

In The

Supreme Court of the United States

October Term, 1993

THE STATE OF OHIO

Cross Petitioner

v.

RALPH E. BUTTS

Cross Respondent

On Writ of Certiorari
To The Supreme Court of Ohio

CROSS PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does a mere occupier of a motor vehicle rented by another carry the burden of proof to establish a legitimate possessory interest in the vehicle to support claims of a legitimate expectation of privacy? Do unauthorized drivers, not listed on the rental contract, lack Fourth Amendment standing to contest a search of the rental vehicle unless affirmatively demonstrating a legitimate possessory interest?

2. Under the vehicle exception to the Fourth Amendment warrant requirement, did the law enforcement officers have probable cause to believe contraband was present in the motor vehicle, thus permitting a search of the vehicle even absent exigent circumstances?

3. Is an inventory search undertaken pursuant to standard written procedures invalid as pretextual if the officers involved had suspicions about potentially illegal conduct prior to the search?

PARTIES TO THE PROCEEDING

STATE OF OHIO

RALPH E. BUTTS

VICTORIA FELDER

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OPINIONS DELIVERED IN THIS CASE

An unreported decision of the Common Pleas Court of Miami County, Ohio, is found in Case No. 92CR56A and B, styled "Order Sustaining Motion to Suppress". This decision was rendered on August 3, 1992.

On January 25, 1993, the Second District Court of Appeals of Miami County, Ohio, entered an opinion and final entry in Case No. 92CA34.

On June 9, 1993, the Supreme Court of the State of Ohio entered a decision denying certification in Case 93-595.

JURISDICTION

Pursuant to Rule 12.3 of the Rules of the Supreme Court, the Cross Petitioner, the State of Ohio, is filing the attached Cross Petition for Writ of Certiorari not more than thirty (30) days after receipt of the original Petition For Certiorari. Judgment of the Ohio Supreme Court, dismissing the State of Ohio's appeal for a judgment from the Miami County Court of Appeals decision was entered on June 9, 1993. Cross Respondent, Ralph E. Butts, thereafter filed a Writ for Petition of Certiorari in this court. This appeal is being docketed within thirty (30) days of receipt of that original Petition for Writ of Certiorari.

Jurisdiction in this Court is predicated on 28 USC, Section 1257-A, in which the Writ of Certiotari may be granted to review a state court decision by the highest court of the state in which the decision could be had, where "any title, right, or privilege, or immunity especially set up were claimed under the constitution . . . or any commission had or authority exercised under the United States."

CONSTITUTIONAL PROVISIONS

Fourth Amendment: Constitution of the United States

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

On February 14, 1992, at about 4:00 o'clock a.m., Cross Respondent Ralph E. Butts was observed driving a Lincoln Town car with California license plates in an erratic manner. (H.T. pp. 80-90) 90). Defendant Victoria L. Felder was a passenger in this car. (H.T.p. 90) Ohio State Highway Patrol Trooper Darron Fussner pulled over the Cross-Respondent and approached his vehicle. Upon questioning, Trooper Fussner discovered that the car was a rental vehicle, but that neither the Cross Respondent nor Victoria Felder's names were on the rental agreement. Cross Respondent and Victoria Felder gave conflicting stories as to whose name was on the agreement and what relationship they had to the

renting party. (H.T. pp. 42-43, 92-100, 151). Trooper Fussner also observed a twelve-pack of beer on the rear seat floorboard, some of which were opened and some of which were not. (H.T. 90). Trooper Fussner also smelled alcohol on Cross Respondent's breath. (H.T., pp. 92,97).

The Cross Respondent was given field sobriety tests and failed them. (H.T., pp. 101-108). At the conclusion of the last field sobriety test, the officers on the scene also discovered that the cross respondent has an outstanding warrant for his arrest for aggravated trafficking in controlled substances. (H.T., pp. 109-110, 144). Cross Respondent was then arrested for driving under the influence as well as being

detained on an outstanding warrant. Cross Respondent was handcuffed, searched, placed in the back of Trooper Fussner's patrol car, and read his Miranda rights. Sgt. Russell Neil Johnson then informed the passenger, Victoria Felder, that the car could not be released to her even though she had a valid driver's license, because she was not listed on the rental agreement. (H.T., 60). The car was then impounded by the officers on the scene.

The Ohio State Highway Patrol had in effect at that time a formal written policy on the conduct of administrative inventories. (See Appendix). Upon the arrival of Trooper Charles Wright, a canine handler, and his narcotics dog, the officers conducted what they

believed to be a proper inventory search of the vehicle. Trooper Wright's dog alerted to drugs in the vehicle, and during the course of the search, a black duffel bag containing cocaine was discovered in the trunk. Victoria Felder was then also placed under arrest.

On August 3, 1992, the Trial Court upheld Cross Respondent's Motion to Suppress the cocaine discovered during the search on the grounds that it was a pretextual inventory search, and therefore invalid. The Trial Court concluded that both the Cross Respondent and Victoria Felder had standing to contest the search, even though they were not the owners of the vehicle, their names did not appear on the rental

agreement, and they had no permission from the rental company to drive or be in possession of the vehicle. On August 5, 1992, the State of Ohio appealed this decision. On January 25, 1993, the Ohio Court of Appeals of Miami County, Ohio, reversed the Trial Court's decision in part and remanded the case for further proceedings. The Appellate Court ruled against the State of Ohio and determined there was sufficient evidence on the record to support the Trial Court's finding that the inventory search was pretextual, that no probable cause existed for the warrantless search, and that standing did exist. However, citing the inevitable discovery rule, the Appellate Court overturned the Trial Court's suppression order. On February

22, 1993, Petitioner and Cross Petitioner filed a Notice of Appeal in the Ohio State Supreme Court. On June 9, 1993, the Supreme Court of the State of Ohio declined to hear either Petitioner or Cross Petitioner's appeal.

ARGUMENT AS TO FIRST QUESTION PRESENTED FOR REVIEW

DOES A MERE OCCUPIER OF A MOTOR VEHICLE RENTED BY ANOTHER CARRY THE BURDEN OF PROOF TO ESTABLISH THAT LEGITIMATE POSSESSORY INTEREST IN THE VEHICLE TO SUPPORT CLAIMS OF LEGITIMATE EXPECTATION OF PRIVACY? DO UNAUTHORIZED DRIVERS, NOT LISTED ON RENTAL CONTRACTS, LACK A FOURTH AMENDMENT STANDING TO CONTEST A SEARCH OF THE RENTAL VEHICLE UNLESS AFFIRMATIVELY DEMONSTRATING SUCH LEGITIMATE POSSESSORY INTEREST?

The Appellate Court and the Ohio Supreme Court should not have sustained the Trial Court's granting of the Cross

Petitioner's Motion to Suppress physical evidence including the cocaine found in the car occupied by the Cross Petitioner, because he did not have standing to challenge this search. In order for any Defendant to raise a constitutional issue of unreasonable search and seizure, he must first demonstrate that he is a proper party to raise the issue. The burden to establish a Fourth Amendment standing lies upon the Defendants. U.S. v. Salvucci, 448 U.S. 83, 86, 65 L.Ed.2d 619 (1980). The State of Ohio contends that the Cross Respondent at no time met this burden of proof.

Through a series of cases, this court has established a number of standards which must be met in order to fulfill

this burden of proof. In general, this court has required the consideration of two factors in determining whether standing exists. First, the Defendant must manifest a subjective expectation of privacy in the area of search. Second, society must be prepared to recognize that expectation as objectively reasonable. California v. Greenwood, 486 U.S. 35 100 L.Ed.2d 30 (1988); California v. Ciraolo, 476 U.S. 207 90 L.Ed.2d 210 (1986). With respect to the standard of subjectively reasonable expectations of privacy, the courts have considered such factors as "the precautions a person takes to maintain his privacy, the way he uses the location, the history of the Fourth Amendment, the property interest

involved, and society's recognition of customary behavior." Rakas v. Illinois, 439 U.S. 128, 152-153, (1978). In light of these considerations, Courts have rendered numerous decisions governing standing necessary to raise a Fourth Amendment issue when the search is associated with an automobile.

In Rakas, this court held that a passenger in an automobile does not, by that mere fact, have standing to object to the search of the vehicle. As this court stated, when referring to petitioners who were passengers in the car that objected to the search of that car,

> They asserted neither possessory interest in the automobile, nor an interest

> in the property seized. As we have previously indicated, the fact that they were legitimately on the premises' in the sense that they were in the car with the permission of the owner, is not determinative of whether they had a legitimate expectation of privacy in a particular area of the automobile search. Rakas 148.

The Cross Respondent has in this case even less of an interest in the vehicle than the Defendants in Rakas. He was not an authorized driver on the rental contract. Neither Cross Respondent nor the passenger Victoria Felder could identify who was authorized to drive the car on the leasing agreement. (H.T., pp. 92, 94, 100) Neither Cross Respondent nor the passenger Victoria Felder provided any evidence that they were authorized to

possess the vehicle by the owner rental company, or for that matter, the authorized driver set forth in the rental agreement. Finally, neither asserted any possessory interest in the bag which contained the cocaine or the other items seized. In light of these facts, the case law clearly indicates that the driver, Ralph E. Butts, did not have the requisite possessory interest in the car necessary to establish his standing to object to the search as a violation of his Fourth Amendment rights.

The Cross Respondent was the driver of a rented automobile, but was not listed as an authorized driver on the rental agreement. In fact, Butts and Felder were never able to agree as to who, in

terms of a relationship to them, the individual on the rental agreement was. Additionally, the Cross Respondent did not identify the individual by name when specifically asked to by the trooper at the scene. (H.T., p. 100). In U.S. v. Obregon, 748 F.2d 1371 (1984), the court upheld the decision of a district court which denied standing to the driver of a rental car who was not named on the rental agreement. The Obregon court cited favorably the language of the district court noting,

> Defendant had the keys to the car and may have had permission from the renter to use it, but this is not determinative of the standing inquiry in this case. The Defendant was driving a rental vehicle and was not named on the rental agreement or any other documents, either as renter or

> authorized driver. Defendant made no showing that any arrangements had been made with the rental car company that would have allowed him to drive the car legitimately. Obregon, 1374.

Based on this finding, the Obregon court denied Defendant standing. The position of the Obregon court has been accepted in other jurisdictions. In the words of the court in U.S. v. Morales, 676 F.Supp. 560 (D.C. Del. 1987):

> These cases [including Obregon] stand for the proposition that the occupier of a vehicle rented by another, lacks the necessary privacy interest to contest the search, but that the renter of the vehicle may contest the search. Morales, 565.

In fact, the Morales court denied standing to the driver of a car rented by another, even when the renter was present in the car. Clearly the facts

of this case, in light of the rulings of Obregon and Morales, indicate that the Cross Respondent had no expectations of privacy in the vehicle and thus had no standing to contest the search in question.

The facts in the case all indicate that the Cross Petitioner had no possessory interest in the car sufficient to establish standing to contest the search. In addition, the second prong of the test set forth in Greenwood and Ciraolo has a not been met. This standard holds that even if the individual has manifested a subjective expectation of privacy in the object of the challenged search, in some cases society's unwillingness to recognize that expectation may negate

standing. In the case at hand, the Ohio Appellate Court based its decision granting standing upon "the totality of the circumstances". In particular, the Appellate Court relied upon the lived in condition of the car as a basis for granting standing. The State of Ohio contends that society is not willing to recognize an expectation of privacy in these circumstances. Specifically, it is conceivable that, under the terms of this standard, the occupants of a stolen vehicle could establish standing by demonstrating long term possession of the car, as well as the presence of personal property within it. Clearly, society is not willing to grant an expectation of privacy in a stolen vehicle based merely on long term

possession.

Thus, the State of Ohio asserts that this court should accept its cross petition on the issue of standing due to the clear conflict between the state court decision and the U.S. Appellate Court decision in U.S. v. Obregon as well as due to the clearly significant federal questions posed by the standard advanced by the Ohio Appellate Court on the issue of standing.

ARGUMENT AS TO SECOND QUESTION PRESENTED FOR REVIEW

UNDER THE VEHICLE EXCEPTION TO THE FOURTH AMENDMENT WARRANT REQUIREMENT, DID THE LAW ENFORCEMENT OFFICER HAVE PROBABLE CAUSE TO BELIEVE CONTRABAND WAS PRESENT IN THE MOTOR VEHICLE, THUS PERMITTING A SEARCH OF THE VEHICLE EVEN ABSENT EXIGENT CIRCUMSTANCES?

The law enforcement officers had

probable cause to believe contraband was present in the motor vehicle, thus permitting a search of the vehicle even absent exigent circumstances.

This court, through a series of cases beginning with Cardwell v. Lewis, 417 U.S. 582 (1974), extending through Colorado v. Bannister, 449 U.S. 1 (1980), and Michigan v. Thomas, 458 U.S. 259 (1982), and concluding with California v. Carney, 471 U.S. 386 (1985), has established the so called vehicle exception to the Fourth Amendment prohibition on warrantless searches. Essentially, under this line of cases, a warrantless search of an automobile may be conducted if the investigating officer has probable cause to believe that contraband is present in

the car. No requirement of exigent circumstances is necessary to permit such a search. Thus, the question becomes whether the troopers in this case commenced the search based upon probable cause that contraband was present within the car.

The courts have been reluctant to establish hard and fast standards upon which to assess probable cause for a warrantless search and seizure. One form of guidance was provided by the court in U.S. v. Orozco, 715 F.2d 158 (5th Cir. 1983). There the court noted that:

> Probable cause is the sum total of the layers of information in the synthesis of what police have heard, what they know, and what they observed as trained officers.

In United States v. Shaw, 701 F.2d 367, 376 (5th Cir. 1983), the court quoting an earlier case observed that:

> Each individual layer of information is not to be weighed, rather, the laminated total of the facts available is the source of the justification for a vehicle search without a warrant.

Probable cause should be based upon good faith, and an honest belief that a violation of law is occurring coupled with circumstances which induce that honest belief. In this case, those circumstances were:

1. The inconsistent and incomplete explanations surrounding the authorized driver listed on the rental contract and the relationship between the Cross Respondent and the authorized driver.

(H.T., pp. 94-95, 100). Neither the Cross Respondent nor Victoria Felder even knew the name of the renter of the vehicle, or the authorized driver. (H.T. 100). Cross Respondent first indicated his aunt had rented it, then he couldn't tell Trooper Fussner her name. Butts then contended that it was Felder's aunt who rented the vehicle. (H.T., pp. 92, 94). Felder maintained the car was rented by Butts' aunt or Butt's sister. (H.T. 100).

2. The inconsistencies and changing explanations of Cross Respondent's trip and destination. (H.T., pp. 94-99).

3. Trooper Fussner's training and experience with respect to the probability of cars traveling between Los Angeles, California, and Detroit,

Michigan, being cars used in the transportation of drugs and other drug trafficking indicators. (H.T. 96). In similar training on the part of Trooper Mosier, and Sgt. Johnson. (H.T., pp. 44, 74).

4. The nervous appearance of Cross Respondent at the scene. (H.T. 98).

5. The suspicious manner in which Felder attempted to read the rental contract in retrieving it and handing it to Butts at Trooper Fussner's request. (H.T., pp. 92-95, 152).

6. The appearance of the interior of the car, which was consistent with a long trip in which the occupants may have been "living in the car". Such an appearance is a possible indication that the car was being used to transport

drugs. (H.T. 74).

7. The car was a rental vehicle. (H.T. 73).

8. The make of the car, a Lincoln Continental, was consistent with the common make of a car used in drug transportation. (H.T. 74).

9. Cross Respondent produced two driver's licenses which appeared suspicious. (H.T., pp. 91, 116).

10. An outstanding aggravated drug trafficking warrant existed for Cross Respondent. (H.T. 109).

11. Trooper Fussner's observations were that Cross Respondent was driving under the influence of alcohol and/or drugs. (H.T., pp. 88-90, 101-108).

12. Trooper Fussner had a "high suspicion" that the car was stolen and

there was possibly drugs in the car. (H.T. 108).

13. A trained narcotics detection dog indicated the presence of a controlled substance inside the car. (H.T., pp. 112, 167-170). In light of all this, probable cause surely existed in the present fact situation. As layers of incriminating evidence in this case became deeper and deeper, and as the case evolved, probable cause took shape. Even without the drug trafficking warrant, a careful officer would have sound reason to believe that the Defendants and their vehicle were engaged in drug trafficking. With the inclusion of the outstanding drug trafficking warrant, the officers were

able to couple their observations with allegations of past conduct similar to that of which they were currently suspected. Surely, the sum total of the information at hand would justify any reasonable officer to conclude probable cause for a warrantless search existed, and that contraband was probably located in the vehicle. Where the police officers have probable cause to search an entire vehicle, they may conduct a warrantless search of every part of the vehicle and its contents, including all movable containers and packages, that may logically conceal the object of the search.

The State of Ohio asks this court to grant its Petition for a Writ of Certiorari on the issue of probable

cause in light of the fact that the facts clearly indicate the presence of probable cause in this case. A significant federal question arises insofar as the erroneous decisions by the lower court in the State of Ohio set a precedent which creates confusion as to what is necessary for the proper establishing of probable cause for the search of an automobile.

ARGUMENT AS TO THIRD QUESTION PRESENTED FOR REVIEW

WHERE IT HAS BEEN DETERMINED THAT A VEHICLE WOULD HAVE BEEN INVENTORIED UNDER VALID, STANDARD INVENTORY PROCEDURES IRRESPECTIVE OF THE OFFICER'S SUSPICIONS, PROBABLE CAUSE, OR INVALID PURPOSES, IS EVIDENCE OBTAINED DURING SUCH AN INVENTORY PRETEXTUAL UNDER THE EXCLUSIONARY RULE, AND THUS SUBJECT TO SUPPRESSION?

According to South Dakota v. Opperman,

428 U.S. 364 (1976), for an inventory to be valid, five (5) tests have to be met. First, the vehicle must be lawfully impounded. In this case, the decision to impound the car was taken after the Cross Respondent was arrested for DUI and for the outstanding warrant for aggravated trafficking. (H.T., pp. 60, 109-114). Impounding is uniformly done under standard procedures when the driver is arrested. In Sgt. Johnson's thirteen (13) years of experience as a patrolman, the rental vehicles driven by persons arrested for DUI have always been impounded where no authorized driver is present. (H.T., pp. 57, 60, 82, 84-86, 111-114). Such a procedure is bona fide and reasonable.

Second, the inventory must take place after the car is impounded. In this case, the inventory did not commence until after the Cross Respondent was arrested, and thus, after such time as the vehicle could properly have been impounded. Additionally, Sgt. Johnson's testimony indicates that, when talking with Victoria Felder prior to any inventory or search, he informed her that the car, in fact, was impounded at that time. "I cannot release the car to you even though you have a valid Michigan driver's license, because your name is not on the rental agreement." (H.T.p. 60)

Third, the owner of the car must not be present to make any other arrangements. Here, the owner of the car

was Budget Rent-A-Car. (H.T., pp. 57-114). The proper possessor of the car, and the listed driver on the rental agreement, was not present. Neither Ralph Butts nor Victoria Felder were listed drivers on their rental agreement, nor could either driver even inform the officers who the listed driver was. (H.T., pp. 92-94, 100). The procedure in this case was consistent with past practices of the Ohio Highway Patrol in similar situations. (H.T., pp. 60, 82).

Fourth, the inventory must be pursuant to standard police procedures and should be prompted by valuables in plain view. In this case, all of the officers involved testified that the standard inventory sheet was filled out during

the course of the inventory and that the inventory was conducted according to standard procedure. (H.T. pp. 7, 8, 24-25, 40, 57, 60-61, 63, 84, 112-114, 149, 153-155). In addition, Trooper Fussner did observe some personal items in the car which were likely to be valuable. ("There was, I believe, a pillow, some kleenex, a flowered bag, some other bags.") (H.T. 90). Later, Defendant Felder informed Sgt. Johnson that these bags were personal bags. Also, the troopers were aware of other luggage items in the trunk of the car. (H.T., pp. 59-60). Under these circumstances, an inventory was proper to safeguard the positions that the Defendants, which were located in the unlocked suitcases and bags.

The use of the canine to locate the drugs as part of the inventory protects the officers, tow truck owner, and public from exposure to the drugs, unwitting possession of the drugs, and the dangers associated with such possession, including exposure to unknown accomplices. (H.T. 183). What personal property could possibly be more valuable, and thereby more dangerous, than cocaine? It was perfectly proper for the officers to subject an automobile on the open highway to a walkaround by a well trained drug dog. Such a procedure does not constitute a search. U.S. v. Place, 462 U.S. 696 (1983). The evidence shows the dog routinely rode with Trooper Wright on patrol, (H.T. 178), was used whenever

"Trooper Wright is close in DUI stops", (H.T. 177), assisted in inventory procedures when called upon, (H.T. 180), and when it was suspected that drugs might be present. (H.T. 180). The dog routinely sniffed cars in traffic arrests, (H.T. 179), as expressly sanctioned by this court in U.S. v. Place.

Fifth, Opperman requires that the inventory not be undertaken as a pretext to conceal an investigatory search. It must be noted that the outset that the courts have not viewed Opperman so narrowly as to view any inventory search coupled with suspicion as tainted. So long as the procedure is uniformly and consistently used within the policies

established and is not used as a discretionary excuse for a search, the requirement is fulfilled. In U.S. v. Frank, 865 F.2d 992, 1001 (3rd Cir. 1988), the court held that:

> The mere fact that an inventory search may also have an investigatory purpose does not, however, invalidate it.

Furthermore, as the court noted in U.S. v. Orozco, 715 F.2d158 (5th Cir. 1983):

> Nothing in Opperman indicated that a search may not be upheld on "inventory" grounds so long as that was one of the police motives. Orozco 161.

Obviously, the troopers in this case had probable cause to believe that the vehicle would contain drugs. Yet, these grounds do not taint what was otherwise a proper inventory which would

have occurred no matter what the troopers thought they might find. If suspicion tainted inventories, then the courts would in effect invalidate a vast number of inventory procedures, given the nature of police work. In such event, the courts would be penalizing law enforcement officers for suspicions which are encouraged by their training, experience, and intelligence.

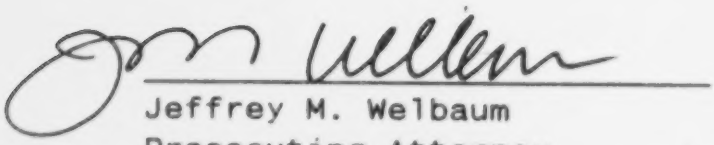
In summary, the tests set forth by Opperman have been met in this case, and the search undertaken was a proper inventory. The State of Ohio asks this court to grant its Petition for a Writ of Certiorari on the issue of the inventory search because the lower court decisions in the State of Ohio conflict with the decision in U.S. v. Orozco and

U.S. v. Frank, and also present a significant federal question in light of the precedents effect such a decision.

CONCLUSION

In conclusion, the State of Ohio asks this court to grant its Petition for a Writ of Certiorari based upon the three (3) questions posed. Clearly, the Ohio Courts' decision with respect to its standing are contrary to those in other U.S. Appellate Courts as well as posing a significant Federal Court question. In addition, the Ohio Courts' decisions on the issues of probable cause and the inventory search are of a significant federal nature and set an inappropriate precedence which may be followed in the State of Ohio.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Cross Petition was sent by regular U.S. Mail to Ms. Nancy Thornburgh, Attorney for Cross Petitioner, at 18 E. Water Street, Troy, Ohio, 45373, this 1st day of October, 1993.

Jeffrey M. Welbaum

A P P E N D I X

POLICY 9-203.05-01
ADMINISTRATIVE - OPERATIONS POLICY

SUBJECT: ADMINISTRATIVE INVENTORY

I - PURPOSE

To provide guidelines for conducting an administrative inventory on vehicles and property recovered by Division officers.

II - POLICY

A. An administrative inventory is necessary:

1. To protect personal property,
2. To protect the public caretaker, (i.e., towing or storage company) and
3. To protect the officer and the Division.

B. OSHP Rules and Regulations, 4501: 2-6-02 Performance of Duty and Conduct, Section (W), states in part that "a member shall carefully protect and preserve for proper disposition any article or property recovered or turned over to them after loss by its rightful owner, held as evidence, seized from a prisoner or otherwise entrusted to their care."

C. On the occasion of abandonment, traffic crashes, criminal investigations and certain arrest actions, it is necessary for our officers to remove motor vehicles or other property from the scene to a location of greater security. Prior to releasing the motor vehicle or other property from Division control, an inventory must be completed if the owner is not present when the vehicle is removed.

D. The Division's policy is to inventory all vehicles or other property with which we become involved where the owner or agent of the owner is unable to assume control of the property. If contraband or other incriminating materials are discovered during the course of an inventory, the officer will seize the items following normal rules of evidence and file criminal charges where appropriate. Once an inventory has been initiated, the officer must complete the inventory

and should not stop after finding contraband or other incriminating materials.

E. The scope of the inventory and the level of security for the property which is inventoried is the responsibility of the officer whose signature appears on the appropriate inventory report. Recent court opinions have indicated that closed containers may be inventoried. This will include locked and unlocked luggage and briefcases as well as other closed, sealed or taped containers. Should a key be available, locked containers should be opened and the contents inventoried. Should a key not be available, the decision to open locked containers should be an objective one based on the totality of circumstances and whether the contents of the container can be determined by the container's exterior. Officers should be aware the Division may have to assume responsibility for any property damaged during an inventory. The end result of an inventory should be the documentation of all articles of value which the officer and the Division have a responsibility to protect.

F. During the course of a routine inventory, the following areas should be checked for items of value:

1. Passenger compartment of a motor vehicle. (The passenger compartment is defined as any place the occupant can reach without exiting the vehicle.)
2. Glove compartment (unlocked or, if locked, when the key is available).
3. Trunk area; to include any side panel compartment and under the spare tire (when the trunk key is available, unless exigent circumstances exist or probable cause exists to indicate items of value are present).
4. Engine compartment (visual observation of items of value).
5. Closed, locked, sealed, or taped containers (the Division will have to assume responsibility for any property damaged).
6. Other vehicles (trailers being towed, etc, when the key is available).
7. Luggage carriers.

III - SPECIAL PROVISIONS

Background information on United States Supreme Court decisions concerning inventories is attached to this policy as a resource document (ADDENDUM A).

*While conducting an administrative inventory, the Division inventory report form (HP-25D) must be completed in its entirety.

*Revised to add specific language regarding locked containers with/without keys and the HP-25D vehicle inventory form, and to add a policy reference.

CALEA REFERENCE 42.2.03

POLICY REFERENCES:

9-101.03 - Recovery of Stolen Vehicles
9-200.09 - Recovered Motor Vehicles
9-203.05 - Search and Seizure
10-25A - Lost or Recovered Property Report
*10-25D - Vehicle Inventory Form

ADDENDUM A

RESOURCE DOCUMENT

ADMINISTRATIVE INVENTORY COURT CASES

1. The initial landmark decision concerning administrative inventories for law enforcement officers was rendered in a 1976 U.S. Supreme Court decision entitled South Dakota vs. Opperman (428 U.S. 364.371). The U.S. Supreme Court in Opperman stated an inventory is a search and the appropriate standard by which its legality is to be measured is the fourth amendment standard of "reasonableness". The Court stated an inventory is a "community caretaking function" interest of public safety and the efficient movement of vehicular traffic. The Court ruled an inventory is an administrative function that is noncriminal in nature and must be completed in accordance with a "standard police procedure."

2. In 1987, the United States Supreme Court clarified the case law on warrantless inventory searches in the Colorado vs. Bertine decision (479 U.S. 367). The Supreme Court concluded an inventory search may include any container found inside of the vehicle as well as the entire vehicle itself.

However, containers may only be opened if the inventory is conducted pursuant to a standard police policy requiring such searches and is not undertaken for the sole purpose of uncovering evidence of a crime.

3. In 1990, the United States Supreme Court rendered the Florida vs. Wells decision (110 S. Ct. 1632) which ruled that standardized criteria or an established routine must regulate the opening of containers found during inventory searches. The Court added that it is not necessary for an inventory policy concerning closed containers to be all or nothing and that a department policy may allow a police officer sufficient latitude to determine whether a particular container should be opened in light of the nature of the search and characteristics of the container. In essence, police departments have a right to institute their own policies on whether or not to open a container, based on whether the officers can tell what's inside the container, any danger that the officers might be put in because of the container, and the responsibility to protect the personal property of the suspect.